

NOTICE OF EMERGENCY RULE ADOPTION

OCC RECEIVED AT
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ADOPTION DATE:
December 10, 2018

By: Spencer Cronk, City Manager

The City Manager has adopted the following emergency rule. This notice is issued under Chapter 1-2 of the City Code.

EFFECTIVE DATE OF EMERGENCY RULE

The rule adopted by this notice is effective on **December 10, 2018** and expires on **April 10, 2019** (not later than the 121st day after the effective date). The rule may be renewed one time after the expiration date. If the rule is renewed, it will expire on the 61st day after the renewal date.

TEXT OF PROPOSED RULE

The text of the emergency rule is attached.

A copy of the complete text of the adopted rule is available for public inspection and copying at the following locations. Copies may be purchased at the locations at a cost of ten cents per page:

Austin Transportation, Right of Way Management, located at 1501 Toomey Road, Austin, Texas 78704

and

Office of the City Clerk, City Hall, located at 301 West 2nd Street, Austin, Texas 78701.

NATURE OF EMERGENCY

Emergency rules are necessary to implement rule revisions for streamlining existing rules to comply with new federal regulations on local authority over use of public rights-of-way by wireless providers installing small wireless facilities in rights-of-way and on public poles. The Federal Communications Commission adopted a Declaratory Ruling and Third Report and Order that included new federal rules (47 C.F.R. Part 1, Subpart U, §§1.6001 through 1.6003)(collectively, "federal rules") effective January 14th, 2019. The F.C.C. interpreted sections of the Federal Telecommunications Act to limit local authority over permitting decisions regarding the use of City rights-of-way and City poles by commercial wireless providers for wireless network equipment. Emergency action is necessary to streamline existing right-of-way permitting for small cell facilities consistent with local regulatory authority in compliance with the federal rules.

BRIEF EXPLANATION OF THE EMERGENCY RULES

The emergency rule adopts policies and procedures relating to enforcement of Chapter 14-11 of the City Code, relating to the use of City Rights-of-Way and City infrastructure by cellular service providers for wireless network infrastructure. This is an emergency rule to adopt revisions to regulations implemented by the Austin Transportation Department. The emergency rule establishes streamlined permitting requirements and design criteria for use of and activities within public rights-of-way conducted by wireless providers installing wireless network facilities.


AUTHORITY FOR ADOPTION OF EMERGENCY RULE

The authority and procedure for adoption of these rules is set forth in Chapters 1-2 and 14-11 of the Austin City Code.

CERTIFICATION BY CITY ATTORNEY

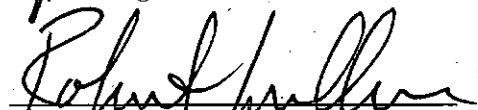
By signing this Notice of Emergency Rule Adoption Rule R161-19.08e, the City Attorney certifies that the City Attorney has reviewed the rule and finds adoption of the rule to be a valid exercise of the City Manager's authority.

REVIEWED AND APPROVED:




Spencer Cronk
City Manager

Date: 12/10/18



Robert Spillar, P.E.
Director, Transportation Department

Date: 12-10-2018



Anne L. Morgan
City Attorney

Date: 12/10/18

Section 12.7 of the Transportation Criteria Manual is amended as follows:

12.7 - Design Standards

The intent of the design standards is to ensure that the installation of network nodes, node support poles, and equipment cabinets is compatible with existing land use and urban design regulations.

The design standards in this section apply to the installation of network nodes, node support poles, cabinets, and associated equipment within public right-of-way throughout the City unless more specific design elements, concealment measures, or camouflage requirements are set out for a specific design or historic district. A design district is an area within the City with a zoning classification or other City Code designation for which unique design and aesthetic standards are applied uniformly. Design districts include, but are not limited to:

- (1) the Central Business District (CBD);
- (2) numerous Planned Unit Developments, Neighborhood Conservation Combining Districts, Planned Development Agreements, Master Development Agreements, and small-area Regulating Plans;
- (3) the Waterfront Overlay District;
- (4) neighborhoods subject to the Residential Design and Compatibility Standards and/or adopted neighborhood plans;
- (5) numerous historically significant districts, such as the East 6th/Pecan Street Overlay, Castle Hill Historic District, and general Historic District and Historic Area Combining Districts;
- (6) the University Neighborhood Overlay District;
- (7) the Lake Austin Overlay District;
- (8) the Traditional Neighborhood District; ~~and~~
- (9) Municipal parks; and
- (10) ~~[(9)]~~ commercial and multi-family development subject to standards codified as "Design Standards and Mixed Use."

12.7.1 - Design Standards City-Wide

- A. Where design district or historic district boundaries overlap, the more restrictive of the standards shall apply. Design standards, including concealment measures, applicable to a specific design district prevail over conflicting city-wide design standards.
- B. Site Selection - It is the City's policy to preserve as open, as much as possible, the surface and air above the public right-of-way to keep sight-lines open for public safety and aesthetic purposes. Subject to design standards applicable to the specific design district, the City in its sole discretion, will consider permit applications ~~[To achieve that end, permits to use the public right-of-way]~~ for network nodes and node support poles ~~[will be prioritized]~~ in the following order of priority:
 1. Node support poles. Outside the CBD, node support poles must be separated by at least 250 feet. Within the CBD, node support poles may be placed only at street intersections with a maximum of four node support poles per intersection -- no more than one at each corner. Node support poles may not obstruct a pedestrian clear zone or conflict with existing utilities.

2. ~~[1-]~~ Collocation ~~[First, collocation]~~ on existing utility poles. The allowed design, installation, and construction details, for utility pole collocation is shown and described in the Utilities Criteria Manual.
3. ~~[2-]~~ Collocation ~~[Second, collocation]~~ on existing traffic poles – No more than 75% of the existing traffic signal poles at an intersection of two streets is available for node collocation ~~[In order to minimize visual clutter and maintain future infrastructure availability for both the City and other projects, a maximum of two traffic poles per intersection may be made available for network node installation]~~. Only one node antenna and its associated base equipment cabinet may be permitted on a traffic pole. The design, installation, and construction must comply with section 12.4.1 of this Rule.
4. ~~[3-]~~ Collocation ~~[Third, collocation]~~ on non-decorative streetlight poles. Network nodes may not be placed on historic or decorative poles. The allowed design, installation, and construction details for non-decorative streetlight poles is shown and described in the Utilities Criteria Manual.
- ~~[4-]~~ Last, node support poles. In order to receive a permit to install a node support pole, the network provider must demonstrate that no collocation options are available for the service area. Node support poles must be separated by at least 250 feet.]

C. Underground Utility Districts.

1. Node ~~[Nodes]~~ support poles may not be placed in public right-of-way in areas of the City where wireline based public utilities such as electricity and telecommunications are provided by underground distribution networks rather than by aerial support on utility poles. Such an area is, for the purposes of this Rule, an Underground Utility District: an area where poles, overhead wires, and other above-ground utility equipment have been removed and placed underground or have been approved for future placement underground.
2. If the director determines that a section of public right-of-way within an Underground Utility District has, as of September 1, 2017, utility poles supporting aerial wireline based public utility distribution extending more than 300 feet, node support poles may be placed in that section of right-of-way subject to the requirements in this Rule applicable to node support poles.
3. Except for base-mounted and shrouded equipment for collocations on traffic poles consistent with construction details for a traffic pole collocation set out in section 12.4.1 of this Rule, network node equipment, other than the antenna, must be placed below ground in an Underground Utility District.

- D. Equipment shall be installed in a manner that does not hinder pedestrian walkways or interfere with traffic signal equipment. All attachments to a pole that are projecting, or any equipment or appurtenance mounted on the ground, shall comply with the Americans With Disabilities Act and shall not obstruct an existing or planned sidewalk.
- E. For network nodes placed on existing poles, the color of the network nodes shall match the existing pole color, such that the network nodes blend with the existing pole.
- F. The following requirements apply to all node support poles: ~~[Where applicable, node support poles shall be placed within the planting zone in alignment with existing street trees or light poles. Poles shall be placed equidistant between street trees, with a minimum separation of 15 feet from tree to pole. The planting zone is an area adjacent to the curb in which street trees may be planted. The zone is also intended for the placement of street furniture, public utility equipment such, and similar elements in a manner that does not obstruct pedestrian access or motorist visibility.]~~
1. Node support poles may be placed within the planting zone in alignment with existing street trees or light poles, equidistant between street trees, with a minimum separation of 11 feet from tree to pole. The planting zone is an area adjacent to the curb in which street trees may

be planted and in which street furniture, public utility equipment, and similar elements may be placed provided it does not obstruct pedestrian access or motorist visibility.

2. Equipment may not be located so as to inhibit a consistent, uniform streetscape, or tree trimming. Any tree trimming must maintain the tree's natural shape and growth pattern.
 3. Network nodes and node support poles must be designed to be compact and unobtrusive so as to minimize the visual impact on the surrounding streetscape. The applicant shall avoid using enclosures that are bulky or include distracting materials.
 4. Network nodes and equipment should be grouped or stacked close together on the same side of the pole. Large gaps between equipment and enclosures should be avoided.
 5. The color of network nodes and node support poles must match the color of existing poles in the area.
 6. The total height of a node support pole plus any network equipment may not exceed 30-feet above ground level unless the application for a node support pole exceeding a height of 30-feet above ground level, but not exceeding 55-feet above ground level, demonstrates to the director's satisfaction that an exception is warranted because: (a) the surrounding aesthetic conditions, utility criteria, and zoning are compatible with a node support pole of the proposed height, and (b) a height any less than that proposed would effectively prohibit the provision of wireless services. In no event may the height of a node support pole exceed the lesser of: (a) the height of the tallest existing utility pole located within 500 linear feet of the proposed pole in the same public right-of-way plus 10 feet, or (b) 55-feet above ground level.
 7. Equipment cabinets may be mounted to the node support pole, placed in the designated street furniture area, or located underground. Cabinets placed on node support poles must be located at least nine feet above ground level. The center of the cabinets must be located the same distance from the face of curb as street trees and service poles. Cabinets shall be designed to be unobtrusive and compatible with the surrounding environment.
 8. Coordinate placement of any proposed sidewalk cabinet with City Urban Design personnel to ensure the cabinet does not interfere with the development of standard streetscapes.
 9. Any area disturbed by the installation of node support poles, associated equipment, or transport facilities shall be restored to its original condition. In areas where pavers have been installed, paver restoration must be shown in the permit plans. The restoration of paving must follow the existing pattern, joints, grade, and crown so as to blend in with the adjacent existing paving. Only pavers that are in good condition, without cracks or chip, may be reused. Replacement pavers are to conform in size and color to the existing pavers.
- G. Faux Treatments - Concealment may not include faux trees, faux landscaping, or other faux decorative items.
- H. The network provider is responsible for all make-ready costs, whether performed by the provider, a third party or the City.
- I. Where micro-trenching is used, any sealant must match the color of the surrounding surface.

12.7.2 - Design District Requirements

12.7.2.1 - Downtown Austin District

- A. Downtown Austin is an area bounded by Martin Luther King, Jr. Boulevard [MLK Blvd.], Interstate Highway 35 [IH-35], Lady Bird Lake, and Lamar Boulevard Blvd., as established in the Downtown Austin Plan.
- B. Site Selection - Network nodes may [only] be located only in the following public right-of-way locations in Downtown Austin in the following [by] order of priority [preference]:

1. ~~[First,]~~ Colocation on Traffic Poles - Great Street standards consist of eight traffic pole foundations at each intersection. ~~[In order to minimize visual clutter and maintain future infrastructure availability for both the City and other projects, a maximum of two traffic poles per intersection may be made available for small cell equipment installation. Only one antenna and equipment cabinet may be permitted on a traffic pole and must comply with the allowed design, installation, and construction details for a traffic pole collocation set out in section 12.4.1 of this Rule.]~~
 2. Node Support Poles.
 - a. Node support poles may be placed at intersections, in the street furniture zone, within 17 feet of the edge of the curb ramp and at least 8 feet from a traffic pole. In areas without a street furniture zone, node support poles must be placed at least 18 inches from the back of the curb or aligned with existing poles.
 - b. The placement of a node support pole may not conflict with an existing tree canopy.
 - c. The placement of a node support pole may not obstruct pedestrian travel. The required pedestrian clearance is described in Section 4 of the Transportation Criteria Manual. If existing non-conforming sidewalks make strict compliance infeasible, the applicant shall coordinate with city staff on a possible location placement of the node support pole.
 - d. A maximum of 2 nodes may be placed on a node support pole.
 - e. The maximum diameter of a node support pole is 16 inches.
 - f. The color and finish of the pole must match the color and finish of the City's Great Street's poles.
 3. Collocation ~~[Second, collocation]~~ on existing service poles and other non-decorative poles. Great Street poles are considered decorative poles and not available for the attachment of network nodes.
- C. Underground Utility District - Downtown Austin is an Underground Utility District.
- D. If an existing utility conflict makes underground placement of network provider equipment unfeasible, a network provider [applicant] may request a waiver from the Director to collocate the cabinet in street furniture and shall [on the sidewalk and] coordinate with City Urban Design personnel on [the] design and placement [of the cabinet] to ensure [that] the cabinet complies [does not interfere] with Great Street design standards. ~~[the development of Great Street standard streetscapes. If surface placement is requested due to utility conflicts, an equipment cabinet:~~
1. ~~may only be placed in the designated planting zone; and~~
 2. ~~may not be located so as to inhibit a consistent, uniform streetscape, or tree trimming necessary to maintain the tree's natural shape and growth pattern.~~
- E. ~~Network nodes must be designed to be compact and unobtrusive so as to minimize the visual impact on the surrounding streetscape. The applicant shall avoid using enclosures that are bulky or include distracting materials.-]~~

12.7.2.2 - University Neighborhood Overlay

- A. The University Neighborhood Overlay (UNO) includes the West Campus neighborhoods of Outer West Campus, Inner West Campus, Guadalupe, and Dobie. The boundaries of UNO are established by Appendix C of Chapter 25-2 of the City Land Development Code.
- B. Network nodes may not be placed on the UNO Pecan Street decorative poles.
- C. ~~A maximum of 2 nodes may be placed on a node support pole. [Node support poles shall be placed within the planting zone, in alignment with existing or future UNO decorative poles and street trees. Poles shall be placed equidistant between street trees, with a minimum separation of 15 feet from tree to pole.]~~
- D. ~~The maximum diameter of a node support pole is 16 inches. [Nodes support poles may not be located so as to inhibit a consistent, uniform streetscape, or tree trimming. Any tree trimming must maintain the tree's natural shape and growth pattern.]~~
- ~~E. Network node and Node Support Pole Design—Network nodes and node support poles must be designed to be compact and unobtrusive so as to minimize the visual impact on the surrounding streetscape. The applicant shall avoid using enclosures that are bulky or include distracting materials.
 - 1. ~~Placement—Network nodes and equipment should be grouped or stacked close together on the same side of the pole. Large gaps between equipment and enclosures should be avoided.~~
 - 2. ~~Color—The color of network nodes and node support poles must match the color of the UNO Pecan Street decorative pole such that they blend with the color of the district's streetscape elements.~~
 - 3. ~~The total height of a node support pole plus any network equipment may not exceed 30 feet from ground level.~~~~
- F. ~~Cabinet Placement and Design—Equipment cabinets may be mounted to the pole, placed in the designated street furniture area, or located underground. Cabinets placed on poles must be located at least nine feet above ground level and follow the design standards described above in subsection D.
 - 1. ~~The center of the cabinets must be located the same distance from the face of curb as street trees and service poles. Cabinets shall be designed to be unobtrusive and compatible with the surrounding environment.~~
 - 2. ~~Applicant shall coordinate the placement of any proposed sidewalk cabinet with Urban Design to ensure that that the cabinet does not interfere with the development of UNO standard streetscapes.~~~~

12.7.2.3 - Core Transit Corridors, Waterfront Overlay, Special Regulating Districts, Planned Unit Developments (PUD), and Planned Development Agreements (PDA)

- A. Geographic Areas
 - 1. Core Transit Corridors - Core Transit Corridors (CTCs) and Future Core Transit Corridors (FCTCs) were established in 2005 and 2006 by City Council in order to improve design standards along major roadways. The roads identified as CTCs and FCTCs are established in Chapter 25-2, subchapter E of the City Land Development Code.
 - 2. The Waterfront Overlay encompasses land surrounding Lady Bird Lake and the Colorado River and includes parkland, part of Downtown, and the South Central Waterfront. The boundaries of the Waterfront Overlay district are established by Appendix B of Chapter 25-2 of the City Land Development Code.

3. Special Regulating Districts are areas zoned as Transit Oriented Development (TOD), North Burnet Gateway (NBG), and East Riverside Corridor (ERC).
 4. Planned Unit Developments (PUDs) are a type of special purpose zoning district established in Chapter 25-2 of the City Land Development Code.
 5. Planned Development Agreements (PDAs) are a type combining zoning district established in Chapter 25-2 of the City Land Development Code.
- ~~[B. Node support poles shall be placed within the planting zone in alignment with existing street trees or light poles. Poles shall be placed equidistant between street trees, with a minimum separation of 15 feet from tree to pole.~~
- ~~C. Poles may not be located so as to inhibit a consistent, uniform streetscape, or tree trimming. Any tree trimming must maintain the tree's natural shape and growth pattern.~~
- ~~D. Node and Pole Design. Network nodes and node support poles must be designed to be compact and unobtrusive so as to minimize the visual impact on the surrounding streetscape. The applicant shall avoid using enclosures that are bulky or include distracting materials.~~
- ~~1. Placement. Network nodes and equipment shall be grouped or stacked close together on the same side of the pole. Large gaps between equipment and enclosures should be avoided.~~
 - ~~2. The color of a network node placed on any existing pole must match the color of the existing pole.~~
- ~~E. Cabinet Placement and Design. Equipment cabinets may be mounted to the pole, placed in the designated street furniture area, or located underground. Cabinets placed on poles must be located at least nine feet above ground level and follow the design standards described above in subsection E. The center of the cabinets must be located the same distance from the face of curb as street trees and service poles. Cabinets shall be designed to be unobtrusive and compatible with the surrounding environment.]~~

12.7.2.4 Municipal Parks.

- A. Network nodes may be permitted in public rights-of-way in municipal parks subject to the following standards and only in the following order of priority:
1. Collocation on existing utility poles. The allowed design, installation, and construction details, for utility pole collocation is shown and described in the Utilities Criteria Manual, with the exception that all equipment – not including the antenna – must be located below ground level unless shrouded or camouflaged in accordance with a design approved by the Director of the Austin Parks and Recreation Department.
 2. Collocation on existing traffic signal poles. Excluding the antenna, all equipment must be located below ground level unless shrouded or camouflaged in accordance with a design approved by the Director of the Austin Parks and Recreation Department.
 3. Collocation on non-decorative light poles. Network nodes may not be placed on decorative poles. The allowed design, installation, and construction details for collocations on non-decorative light poles is shown and described in the Utilities Criteria Manual with the exception that all equipment – not including the antenna – must be located below ground level unless shrouded or camouflaged in accordance with a design approved by the Director of the Austin Parks and Recreation Department.
 4. Node support poles. Before applying for a node support pole, the applicant must obtain written consent from an authorized representative (in the case of parks

owned, operated, or maintained by the City of Austin, the Director of the Austin Parks and Recreation Department). An application for a permit to install a node support pole must demonstrate that: no collocation options are available for the service area and no existing node support poles are within 250 feet of the proposed node support pole. Excluding the antenna, all equipment must be located below ground level unless shrouded or camouflaged in accordance with a design approved by the Director of the Austin Parks and Recreation Department.

- B. Equipment Underground Only. Network node equipment, other than the antenna, must be placed below ground.
- C. No Encroachment Into Municipal Parks. No part of a node, node support pole, transport facility, or associated network equipment may be permitted that encroaches into a municipal park beyond the right of way line as that line is established of record by deed or plat. No part of a node, node support pole, transport facility, or associated network equipment may occupy area on, above, or below that part of an improved or unimproved pedestrian path that extends beyond a right of way line, as that line is established of record by deed or plat.

12.7.3 - Historic Districts

- A. The City of Austin has both locally designated historic districts and National Register Historic Districts. Properties in Local Historic Districts are indicated by the addition of "HD" in the zoning designation for each parcel. National Register Historic Districts are administered by the Texas Historical Commission. A list of contributing properties and district maps can be found on the City of Austin's Historic Districts webpage. Nothing in this section is a local allowance or variance from approval under applicable federal law and regulations implementing the National Historic Preservation Act.
- ~~B. Node support poles shall be placed within the planting zone and aligned with any existing trees or poles. Node support poles shall be placed between street trees, with a minimum separation of 15 feet from tree to pole.]~~
- ~~B. [C.] Node support poles may not be placed in the public right-of-way within the Congress Avenue, Bremond Block, or Sixth Street National Register Historic Districts.~~
- ~~[D. Network nodes may not be placed on historic or decorative poles.~~
- ~~E. Network Node and Node Support Pole Design - Network nodes and node support poles must be designed to be compact and unobtrusive so as to minimize the visual impact on the surrounding streetscape. The applicant shall avoid using enclosures that are bulky or include distracting materials.~~
 - ~~1. Placement - Nodes and equipment should be grouped or stacked close together on the same side of the pole. Large gaps between equipment and enclosures should be avoided.~~
 - ~~2. The color of a new node placed on any existing pole must match the color of the existing pole. For new poles in districts with a designated historic pole, the pole and node shall match the color of the designated historic pole for that district.~~
- ~~F. Cabinet Placement and Design - Equipment cabinets may be mounted to the pole, placed in the designated street furniture area, or located underground. Cabinets placed on poles must be located at least nine feet above ground level and follow the design standards described above in subsection E. The center of the cabinets must be located the same distance from the face of curb as street trees and service poles. Cabinets shall be designed to be unobtrusive and compatible with the surrounding environment.]~~

12.7.4 - Historic Landmarks

- A. Historic Landmarks in the City of Austin are indicated by the addition of "-H" zoning designation for each parcel. Nothing in this section is a local allowance or variance from approval under applicable federal law and regulations implementing the National Historic Preservation Act.
- B. Site Selection - Nodes or new node poles must be placed at least 15 [20] feet from a property zoned as a Historic Landmark.